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5                   UNITED STATES DISTRICT COURT  
6                   WESTERN DISTRICT OF WASHINGTON  
7                   AT TACOMA

8                   UNITED STATES OF AMERICA,

9                   Plaintiff,

10                  v.

11                  RICHARD R. RUDD JR., et al.,

12                  Defendants.

CASE NO. C14-5434 BHS

ORDER GRANTING  
PLAINTIFF'S MOTION TO  
STRIKE AND DENYING  
DEFENDANTS' MOTION TO  
DISMISS

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14                  This matter comes before the Court on Defendants Carmen Anjari, Castle Ridge,

15 LLC, and Julie Reeung's ("Defendants") motion to dismiss (Dkt. 39) and the

16 Government's motion to strike (Dkt. 63). The Court has considered the pleadings filed in

17 support of and in opposition to the motions and the remainder of the file and hereby

18 grants the Government's motion and denies Defendants' motion for the reasons stated

19 herein.

20                   **I. PROCEDURAL HISTORY**

21                  On May 30, 2014, the Government filed a complaint against numerous defendants

22 to foreclose federal tax liens and to sell real property. Dkt. 1.

1 On September 2, 2014, Defendants filed a motion to dismiss. Dkt. 39. On  
2 September 25, 2014, the Government responded. Dkt. 47. On October 9, 2014,  
3 Defendants replied and submitted evidence in support of the reply. Dkt. 59. On October  
4 14, 2014, the Government filed a surreply that included a motion to strike new arguments  
5 and evidence. Dkt. 63.

6 **II. DISCUSSION**

7 **A. Motion to Strike**

8 Submission of arguments or evidence for the first time upon reply is improper  
9 because it unfairly deprives the non-movant of an opportunity to respond. *See Provenz v.*  
10 *Miller*, 102 F.3d 1478, 1483 (9th Cir.1996).

11 In this case, the Government requests that the Court strike Defendants' new  
12 evidence and the majority of the reply brief. Dkt. 63. Defendants' motion to dismiss was  
13 based entirely on the interpretation of state statutes. *See* Dkt. 39. The Government  
14 responded that those statutes are irrelevant to the Government's claims. *See* Dkt. 47.  
15 Instead of conceding that their initial arguments were without merit, Defendants replied  
16 and presented arguments and evidence pursuant to the authorities cited by the  
17 Government. Dkts. 59–61. This was improper because the Government does not have a  
18 chance to respond to either the new arguments or the new evidence. Therefore, the Court  
19 grants the Government's motion to strike.

20 **B. Motion to Dismiss**

21 Motions to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil  
22 Procedure may be based on either the lack of a cognizable legal theory or the absence of

1 sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Department*,  
2 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the  
3 complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295, 1301  
4 (9th Cir. 1983). To survive a motion to dismiss, the complaint does not require detailed  
5 factual allegations but must provide the grounds for entitlement to relief and not merely a  
6 “formulaic recitation” of the elements of a cause of action. *Bell Atlantic Corp. v.*  
7 *Twombly*, 127 S. Ct. 1955, 1965 (2007). Plaintiffs must allege “enough facts to state a  
8 claim to relief that is plausible on its face.” *Id.* at 1974.

9 In this case, Defendants argue that the Government’s claim is precluded by  
10 Washington statutes that grant rights to creditors of limited liability companies. Dkt. 39.  
11 The Government argues that Defendants’ motion is without merit and that the complaint  
12 states a valid claim for relief under the applicable federal statutes. Dkt. 47. The Court  
13 agrees. Therefore, the Court denies Defendants’ motion.

14 **III. ORDER**

15 Therefore, it is hereby **ORDERED** that the Government’s motion to strike (Dkt.  
16 63) is **GRANTED** and Defendants motion to dismiss (Dkt. 39) is **DENIED**.

17 Dated this 24th day of November, 2014.

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BENJAMIN H. SETTLE  
United States District Judge